

DAVID R. JOHANSON, ESQ. (Bar No. 164141)
JOHANSON BERENSON, LLP
1776 Second Street
Napa, California 94559
Tel: (707) 226-8997
Facsimile: (707) 229-2493
E-Mail: drj@johansonberenson.com
Attorneys for CRYOTECH INTERNATIONAL, INC.

DOUGLAS A. RUBEL, ESQ. (*Pro Hac Vice*)
JOHANSON BERENSON, LLP
201 Shannon Oaks Circle, Suite 200
Cary, North Carolina 27511
Telephone: (919) 654-4544
Facsimile: (919) 654-4545
E-Mail: dar@johansonberenson.com
Attorneys for CRYOTECH INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CRYOTECH INTERNATIONAL, INC., a
Delaware Corporation, fka VBS
INDUSTRIES INCORPORATED

Plaintiff,

vs.

TECHNIFAB PRODUCTS, INC., an Indiana
Corporation; and DOES 1-50 inclusive

Defendants.

Case No. C08 02921 HRL

Complaint filed June 12, 2008

**MODIFIED STIPULATION AND
REQUEST FOR ORDER MODIFYING
SCHEDULING ORDER AND
ENLARGING DEADLINES FOR
DISCOVERY AND SIMULTANEOUS
EXPERT WITNESS DESIGNATIONS
AND REPORTS AND REBUTTALS,
DISPOSITIVE MOTIONS, AND PRE-
TRIAL AND TRIAL PROCEEDINGS**

Magistrate Judge Howard R. Lloyd

As previously noted in the parties' Stipulation and Request For Order Extending Deadline For Dates Outlined in Case Management Scheduling Order as amended by the Court [Doc. No. 32, filed December 18, 2008] in the parties' Stipulation and Request for Order Modifying Scheduling Order and Enlarging Deadlines for Discovery and Expert Witness Designations and Reports [Doc. No. 38, filed March 6, 2009], the parties exchanged initial written discovery which led to several telephone calls as to how best to exchange information necessary to evaluate the case and maintain confidentiality of confidential and proprietary information, trade secrets, and

1 intellectual property. In the course of those discussions, the parties determined and agreed that an
2 early mediation of the case was indeed possible and perhaps more practical than extended
3 discovery followed by mediation. After further discussion, the parties agreed that if the Court
4 would agree to extend the deadlines for discovery cutoff and expert disclosure, the parties would
5 elect Court Supervised Mediation and work with the Court appointed mediator to establish a
6 protocol for exchange of documents and information necessary to conduct a meaningful
7 mediation. [Doc. No. 31.]

8 The Court granted the Parties Stipulation and Request, and modified the Scheduling Order so
9 the deadlines are currently as follows: Fact Discovery Cutoff – May 29, 2009; Expert Witness
10 Designations and Reports – April 17, 2009; Designations of Rebuttal Experts and Reports – May
11 14, 2009; Expert Discovery Cutoff – May 29, 2009; last day for hearings on dispositive motions -
12 June 9, 2009; Final Pre-Trial Conference - July 14, 2009; and Bench Trial is scheduled for July
13 27, 2009. Stipulation and Request for Order Modifying Scheduling Order and Enlarging
14 Deadlines for Discovery and Expert Witness Designations and Reports filed March 6, 2009 [Doc.
15 No. 38].

16 The parties have commenced "paper" discovery in this case and have attempted to schedule
17 depositions. Further to its Stipulation and Request, the parties agreed to hold in abeyance the
18 depositions and completion of full paper discovery responses pending the parties' mediation, which
19 mediation was held on February 24, 2009, with Mediator Geoff Howard, a court-appointed mediator
20 [Doc. No. 33, dated January 7, 2009].

21 Instead, as part of the mediation, the parties agreed to conduct "limited" discovery for the
22 purposes of mediation. The "limited" nature of the discovery was to allow the parties to obtain
23 certain information from each other that would aid in the resolution of the case, but would not
24 necessarily encompass all information necessary for a trial.

25 The parties attended mediation on February 24, 2009, however, they were and have been
26 unable to settle this case. The parties then filed a proposed Modified Stipulation and Request for
27 Order Modifying Scheduling Order and Enlarging Deadlines for Discovery and Expert Witness
28

Designations and Reports, Dispositive Motions, and Pre-Trial and Trial Proceedings [Doc. No. 39, filed March 27, 2009], which the Court did not act on for reasons that Magistrate Judge Lloyd explained to the parties during a conference call on April 9, 2009. The parties have once again recognized based upon the time needed for depositions and paper discovery and related case management, as well as major surgery that Plaintiff's counsel, David R. Johanson, underwent on March 25, 2009, which prevents him from travelling by air for approximately three to four weeks, and the parties' counsel's trial schedules, that additional time is needed for discovery in this case and for the ultimate Pre-Trial and Trial proceedings. The parties thus request additional time to conduct discovery and to simultaneously designate expert witnesses and reports and rebuttals, however, they are unable to do so without an enlargement of the deadlines for discovery and expert witness designations and reports and rebuttals and dispositive motions. Pursuant to a conference call with Magistrate Judge Lloyd on April 9, 2009, the parties request an enlargement of the fact discovery cutoff deadline from Friday, May 29, 2009, to Monday, August 31, 2009, an enlargement of the Friday, April 17, 2009, simultaneous Expert Witness Designations and Reports deadline to Friday, October 2, 2009, an enlargement of the Thursday, May 14, 2009, simultaneous Designation of Rebuttal Experts and Reports deadline to Friday, October 16, 2009, an enlargement of the Expert Discovery deadline from Friday, May 29, 2009, to Friday, October 30, 2009, an enlargement of the Last Day for Hearings on Dispositive Motions from Tuesday, June 9, 2009, to Tuesday, December 8, 2009, a continuance of the Final Pre-Trial Conference from Tuesday, July 14, 2009, to Tuesday, January 5, 2009, and a continuance of the Bench Trial from Monday, July 27, 2009, to Monday, January 11, 2009. Plaintiff's and Defendant's counsel have agreed to amend the current scheduling order as set forth herein.

Good cause exists for this Court to exercise its discretion and enlarge the times in which the parties have to conduct discovery and simultaneously designate their experts and reports and rebuttals, as well as to make dispositive motions. The parties diligently prepared for and conducted the mediation on February 24, 2009. The parties were diligent in assisting the Court in creating a workable Rule 16 scheduling order. Their noncompliance with the Scheduling Order's deadlines

would occur notwithstanding diligent efforts to comply because of developments (i.e., Mr. Johanson's major surgery and the parties' counsel's trial schedules) that were not reasonably anticipated at the time of the Rule 16 scheduling conference; and the parties are diligent in seeking an amendment of the Scheduling Order once it became apparent that the parties could not comply with the existing Scheduling Order.

If the Court approves, the Parties would propose the following amended schedule:

EVENT	EXISTING DATE	PROPOSED DATE
Fact Discovery Cutoff	May 29, 2009	August 31, 2009
Simultaneous Designation of Experts With Reports	April 17, 2009	October 2, 2009
Simultaneous Designation of Rebuttal Experts With Reports	May 14, 2009	October 16, 2009
Expert Discovery Cutoff	May 29, 2009	October 30, 2009
Last Day for Hearings on Dispositive Motions	June 9, 2009	December 8, 2009
Final Pre-Trial Conference	July 14, 2009	January 5, 2010
Bench Trial	July 27, 2009	January 11, 2010

1 IT IS HEREBY STIPULATED:

2 Respectfully submitted,

3 JOHANSON BERENSON LLP

4
5 Dated: April 16, 2009

By: /s/ Douglas A. Rubel

6 DOUGLAS A. RUBEL
7 Attorneys for Plaintiff Cryotech
8 International, Inc.

9 ROBINSON & WOOD, INC.

10
11 Dated: April 16, 2009

By: /s/ Arthur J. Casey

12 ARTHUR J. CASEY
13 Attorneys for Defendant
14 Technifab Products, Inc.

15 **ORDER**

16 Good cause thereby appearing the Scheduling Order is amended as proposed.

17
18 Dated: 4/20/09, 2009

19 
HOWARD R. LLOYD

20 UNITED STATES MAGISTRATE JUDGE

Certificate of Service

I hereby certify that on April 16, 2009, we filed electronically a true and correct copy of
**MODIFIED STIPULATION AND REQUEST FOR ORDER MODIFYING
SCHEDULING ORDER AND ENLARGING DEADLINES FOR DISCOVERY AND
SIMULTANEOUS EXPERT WITNESS DESIGNATIONS AND REPORTS AND
REBUTTALS, DISPOSITIVE MOTIONS, AND PRE-TRIAL AND TRIAL
PROCEEDINGS.** Notice of the filing was sent by operation of the Court's electronic filing
system to the parties indicated below. All other parties will be served by regular U.S. mail.
Parties may access this filing through the Court's electronic filing system.

DOUGLAS A. RUBEL, ESQ. (*Pro Hac Vice*)
JOHANSON BERENSON, LLP
201 Shannon Oaks Circle, Suite 200
Cary, North Carolina 27511

ARTHUR J. CASEY, ESQ. (Bar No. 123273)
CARRIE M. DUPIC, ESQ. (Bar No. 240252)
ROBINSON & WOOD, INC.
227 North First Street
San Jose, California 95113-1016

MARK HASSLER, ESQ. (*Pro Hac Vice*)
HUNT, HASSLER & LORENZ, LLP
100 Cherry Street
Post Office Box 1527
Terre Haute, Indiana 4780

/s/ David R. Johanson
DAVID R. JOHANSON
Attorneys for Cryotech International, Inc.